Supreme Court, U.S.
FILED
991964 JUN 5 - 2000
OFFICE OF THE CLERK

No. ____

In The

Supreme Court of the United States

Timothy Booth,

Petitioner,

v.

C.O. Churner, *et al.*,

Respondents.

On Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Third Circuit

---

PETITION FOR A WRIT OF *CERTIORARI*

Nancy Winkelman*
Ralph N. Sianni
Counsel for Petitioner
**Counsel of Record*

SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2000

---

62 pp

QUESTION PRESENTED

1. Whether 42 U.S.C. § 1997e(a), as amended by the Prison Litigation Reform Act, which provides that a prisoner must exhaust "such administrative remedies as are available" before bringing a federal action, requires a prisoner seeking only monetary damages to exhaust administrative remedies where monetary damages are not available under the applicable administrative process.

PARTIES TO THE PROCEEDING AND DESIGNATION OF CORPORATE RELATIONSHIPS

Petitioner is Mr. Timothy Booth, who is currently a prisoner incarcerated at the State Correctional Institute at Graterford in Philadelphia, Pennsylvania. Respondents are Corrections Officer Churner, Sergeant Workensher, Lieutenant Rikus and Captain Gardner.

No designation of corporate relationships, pursuant to Supreme Court Rule 29.6, is required in this case.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING AND DESIGNATION OF CORPORATE RELATIONSHIPS ... ii

TABLE OF AUTHORITIES v

PETITION FOR A WRIT OF *CERTIORARI* 1

OPINIONS BELOW 3

STATEMENT OF JURISDICTION 3

STATUTORY PROVISION INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 6

CERTIORARI SHOULD BE GRANTED BECAUSE THE ISSUE WHETHER THE PLRA REQUIRES PRISONERS TO EXHAUST ADMINISTRATIVE REMEDIES THAT CANNOT PROVIDE THE MONETARY DAMAGES THAT THE PRISONER SEEKS IS AN IMPORTANT AND RECURRING ISSUE THAT HAS CREATED A CONFLICT AMONG THE CIRCUITS 7

CONCLUSION 14

APPENDIX

Opinion of the United States Court of Appeals for the Third Circuit, dated March 7, 2000, *Booth v. Churner*, 206 F.3d 289 (3d Cir. 2000) 1a-28a

Order of the United States District Court for the Middle District of Pennsylvania, dismissing as moot Mr. Booth's motion to amend his complaint, dated July 17, 1997, *Booth v. Churner*, No. 3:CV-97-0611 (M.D. Pa. 1997) 29a-31a

Opinion and Order of the United States District Court for the Middle District of Pennsylvania, construing Mr. Booth's motion to vacate as a motion for reconsideration and denying the motion, dated July 3, 1997, *Booth v. Churner*, No. 3:CV-97-0611 (M.D. Pa. 1997) 32a-35a

Opinion and Order of the United States District Court for the Middle District of Pennsylvania, dismissing Mr. Booth's complaint for failure to exhaust administrative remedies, dated May 30, 1997, *Booth v. Churner*, No. 3:CV-97-0611 (M.D. Pa. 1997) 36a-39a

TABLE OF AUTHORITIES

CASES **Page(s)**

Alexander v. Hawk, 159 F.3d 1321 (11th Cir. 1998) ... 12, 13

Basham v. Uphoff, No. 98-8013, 1998 U.S. App. LEXIS 30999 (10th Cir. Dec. 8, 1998) 12

Feliciano v. Servicios Correccionales, 79 F. Supp. 2d 31 (D.P.R. 2000) 14

Freeman v. Francis, 196 F.3d 641 (6th Cir. 1999) 9, 10

Garrett v. Hawk, 127 F.3d 1263 (10th Cir. 1997) 8, 12

Harris v. Garner, 190 F.3d 1279 (11th Cir. 1999) 13

Hartsfield v. Vidor, 199 F.3d 305 (6th Cir. 1999) 9

Langford v. Couch, 50 F. Supp. 2d 544 (E.D. Va. 1999) .. 14

Lavista v. Beeler, 195 F.3d 254 (6th Cir. 1999) 2, 9

Liner v. Goord, 196 F.3d 132 (2d Cir. 1999) 2

Lunsford v. Jumao-As, 155 F.3d 1178 (9th Cir. 1998) ... 8, 11

Massey v. Helman, 196 F.3d 727 (7th Cir. 1999) 10

McCarthy v. Madigan, 503 U.S. 140 (1992) 1, 8, 9, 12

Miller v. Tanner, 196 F.3d 1190 (11th Cir. 1999) 13

Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000) 2, 6, 8

Perez v. Wisconsin Department of Corrections, 182 F.3d 532 (7th Cir. 1999) 10, 11

Rumbles v. Hill, 182 F.3d 1064 (9th Cir. 1999), *cert. denied*, ___ U.S. ___, 120 S. Ct. 787 (2000) 3, 11

Sallee v. Joyner, 40 F. Supp. 2d 766 (E.D. Va. 1999) 14

Smith v. Stubblefield, 30 F. Supp. 2d 1168 (E.D. Mo. 1998) 14

Whitley v. Hunt, 158 F.3d 882 (5th Cir. 1998) 8, 9, 12

Wolff v. Moore, 199 F.3d 324 (6th Cir. 1999) 9

Wright v. Hollingsworth, 201 F.3d 663 (5th Cir. 2000) 2

Wyatt v. Leonard, 193 F.3d 876 (6th Cir. 1999) 2, 9

STATUTES

28 U.S.C. § 1254(1) 3

42 U.S.C. § 1983 ..... *passim*

42 U.S.C. § 1997e(a) ..... *passim*

PETITION FOR A WRIT OF *CERTIORARI*

This petition presents an important issue of federal statutory interpretation that has created a clear and absolute conflict among the federal courts of appeals. The statute at issue is 42 U.S.C. § 1997e(a), which provides that no prisoner shall bring an action with respect to prison conditions under section 1983 or any other federal law "until such administrative remedies as are available are exhausted."

The issue presented in this petition is whether a prisoner seeking monetary damages under section 1997e(a) must exhaust administrative remedies where, as a matter of law, those remedies cannot provide the monetary damages that the prisoner seeks. Three courts of appeals, drawing on this Court's decision in *McCarthy v. Madigan*, 503 U.S. 140 (1992), hold that such inevitably futile "exhaustion" is unnecessary. In direct conflict with these decisions, four courts of appeals — including the Third Circuit in this case — hold that a prisoner must undertake such "exhaustion," even where the administrative processes cannot possibly give the prisoner the monetary damages that s/he seeks.

Specifically, in the Fifth, Ninth, and Tenth Circuits, a prisoner seeking monetary damages where monetary damages are not available under the particular state administrative process may proceed directly to federal court. On the other hand, in the Third, Sixth, Seventh, and Eleventh Circuits, a prisoner seeking monetary damages first must avail him or herself of all state administrative processes, regardless whether monetary damages are available under those processes.

Resolution of the conflict among the circuits is important because section 1997e(a) is at issue in virtually all prisoner civil

rights litigation, regulating the balance between state and federal systems and affecting prisoners throughout the country, whether incarcerated in federal or state prison. Without this Court's resolution of the conflict, this issue will continue to confuse and divide the federal courts. Moreover, the conflict has created and will continue to create two different rules about federal involvement in state processes, depending solely on the fortuity of where a prisoner happens to be incarcerated. The statute implicates fundamental issues of comity and federalism with respect to the balance between federal and state systems, thus making the need for a uniform, national rule of law even more compelling. This petition should be granted in order to establish that rule.[1]

---

[1] The conflict is widely recognized. *See, e.g., Nyhuis v. Reno*, 204 F.3d 65, 69 (3d Cir. 2000) ("[s]everal courts of appeals have addressed the exhaustion and futility question with which we are faced [and] [t]wo general lines of authority have emerged from these cases"); *Wright v. Hollingsworth*, 201 F.3d 663, 666 n.3 (5th Cir. 2000) (urging the court of appeals to grant *en banc* review of the issue, because it is "a question of exceptional importance," "on which [a] panel decision conflicts with the authoritative decisions of other United States courts of appeals."); *Liner v. Goord*, 196 F.3d 132, 135 (2d Cir. 1999) ("[t]he law concerning the PLRA's exhaustion requirement is in great flux. Several circuits, as well as district courts in this circuit, are split on [the issue of] . . . whether the administrative exhaustion requirement is inapplicable where the relief requested - *i.e.*, strictly monetary damages - is not 'available' through the administrative process."); *Lavista v. Beeler*, 195 F.3d 254, 257 (6th Cir. 1999) ("there is a split among the circuits regarding whether a federal prisoner seeking only monetary damages must exhaust administrative remedies"); *Wyatt v. Leonard*, 193 F.3d 876, 878 (6th Cir. 1999) ("[t]he circuits are in some conflict over

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at *Booth v. Churner*, 206 F.3d 289 (3d Cir. 2000), and appears in the Appendix at pages 1a-28a. The opinion of the United States District Court for the Middle District of Pennsylvania dismissing Mr. Booth's complaint pursuant to 42 U.S.C. § 1997e(a) for failure to exhaust administrative remedies has not been officially reported, and appears in the Appendix at pages 36a-39a.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Third Circuit entered judgment on March 7, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1997e(a) (Supp. II 1996) provides:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

---

the issue of whether prisoners must exhaust under the 1996 Act if they seek monetary damages"); *Rumbles v. Hill*, 182 F.3d 1064, 1068 (9th Cir. 1999) (noting that "authorities are split" on issue), *cert. denied*, ___, U.S. ___, 120 S. Ct. 787 (2000).

STATEMENT OF THE CASE

This case arises out of allegations by Timothy Booth, a state prisoner in Pennsylvania, that he was physically assaulted by prison staff on at least four separate occasions while he was confined at the State Correctional Institute at Smithfield in Huntington, Pennsylvania.

The first such assault took place in April of 1996. Mr. Booth alleges that prison staff assaulted him, and that as a result of that assault he suffered an injury to his shoulder. He alleges that his shoulder "slips in and out," and that, despite the recommendation of a prison doctor, he was denied an operation. 4a.

The second assault occurred on February 6, 1997. Mr. Booth alleges that he again was assaulted by one of the officers involved in the first incident. In this altercation, a correctional officer allegedly took Mr. Booth from his cell in handcuffs and threw a cup of cleaning material in his face, after Mr. Booth had thrown water on the officer. 4a-5a.

The third assault of which Mr. Booth complains occurred the following day, on February 7, 1997. Mr. Booth alleges that Lieutenant Rikus shoved Mr. Booth into a storage room shelf, reactivating the shoulder injury, and then left him handcuffed in his cell for half an hour. Specifically, Mr. Booth alleges that, "words [were] exchanged . . . and Lt. Rikus said he should back hand slap me and I said go ahead." He "grabbed my arm and shoved me into the shelf in the storage room." 37a. Mr. Booth alleges that two other officers also were involved in this attack, one of whom pushed Mr. Booth into a door. 5a.

Thereafter, Mr. Booth was relocated to another unit at Smithfield where he allegedly was assaulted for a fourth time, when Officer Churner "uncuffed one hand and asked [Booth] if [he] spit in Officer White's face." 37a. Mr. Booth claims that Churner then punched his face and mouth while Sergeant Workensher and Corrections Officer Kulian watched. 5a. After this assault, Mr. Booth was seen by a doctor who stitched his mouth wounds. 5a.

Mr. Booth sought initial relief on several occasions under the prison's internal grievance procedure. However, he did not fully exhaust the prison administrative remedies because he failed to file any administrative appeals from the prison's denial of his request for relief, as is required under the prison grievance system. 6a. It was undisputed below that Pennsylvania's prisoner grievance procedure did not, during the relevant time, permit the recovery of monetary damages.

On April 21, 1997, Mr. Booth, acting *pro se*, filed a complaint under 42 U.S.C. § 1983 in the United States District Court for the Middle District of Pennsylvania, in which he asserted that he was entitled to both injunctive relief, primarily in the form of a transfer to another prison, and monetary damages. 5a.[2] The district court dismissed Mr. Booth's complaint without prejudice for failure to exhaust administrative remedies under 42 U.S.C. § 1997e(a) because Mr. Booth failed to avail himself of the appellate process within the prison grievance system after his initial requests for relief were denied. 6a. Mr. Booth appealed.

---

[2] Mr. Booth subsequently was transferred to another prison, and thus his claims for injunctive relief became moot.

The Third Circuit Court of Appeals affirmed. Just three weeks earlier, in *Nyhuis v. Reno*, 204 F.3d 65 (3d Cir. 2000), a *Bivens* action brought by a federal prisoner seeking both injunctive relief and monetary damages, the Court of Appeals had held that, "the PLRA amended § 1997e(a) in such a way as to make exhaustion of all administrative remedies mandatory — whether or not they provide the inmate-plaintiff with the relief he desires in his federal action." *Nyhuis*, 204 F.3d at 67. In *Booth*, the Court of Appeals adopted the *Nyhuis* rule for state prisoners, concluding that, in view of the federalism interests at stake, "the *Nyhuis* rule has even greater force with respect to § 1983 actions." 23a. The court thus held that, "because Booth failed . . . to exhaust his available administrative remedies (rather than those he believed would be effective) before filing his § 1983 action, the district court appropriately dismissed his action without prejudice." 24a.[3]

REASONS FOR GRANTING THE WRIT

In an address before the American Bar Association on September 7, 1949, Chief Justice Vinson noted that the function of the United States Supreme Court is "to resolve conflicts of opinion on federal questions that have arisen among lower courts, to pass upon questions of wide import under the Constitution, laws, and treaties of the United States, and to exercise supervisory power over lower federal courts. . . . Those of you whose petitions for *certiorari* are granted by the Supreme Court will know, therefore, that you are, in a sense, prosecuting or defending class actions; that you represent not only your clients,

---

[3] The Court of Appeals also held that an excessive force claim is a claim "with respect to prison conditions" under section 1997e(a). 8a-15a. Mr. Booth does not seek *certiorari* on that issue.

but tremendously important principles, upon which are based the plans, hopes and aspirations of a great many people throughout the country." Address of Chief Justice Vinson before American Bar Association, Sept. 7, 1949, 69 S. Ct. v, at vi. These words are particularly apt here.

Mr. Booth respectfully requests that this Court resolve the irreconcilable conflict among the circuits with respect to the application of section 1997e(a) in cases where the applicable administrative process cannot possibly provide the monetary damages that the prisoner seeks.

CERTIORARI SHOULD BE GRANTED BECAUSE THE ISSUE WHETHER THE PLRA REQUIRES PRISONERS TO EXHAUST ADMINISTRATIVE REMEDIES THAT CANNOT PROVIDE THE MONETARY DAMAGES THAT THE PRISONER SEEKS IS AN IMPORTANT AND RECURRING ISSUE THAT HAS CREATED A CONFLICT AMONG THE CIRCUITS.

As of the time of the filing of this petition, seven courts of appeals had ruled in conflicting ways on the issue whether section 1997e(a) requires a prisoner seeking monetary damages to exhaust administrative remedies that cannot possibly provide the monetary damages sought. The conflicting law among these circuits is set forth below.

The Court of Appeals for the Third Circuit

In the present case in which *certiorari* is sought, the Third Circuit held that section 1997e(a) requires a state prisoner seeking monetary damages to exhaust all prison administrative

remedies, even if those remedies cannot provide the monetary damages that the prisoner seeks. In so holding, the court applied its reasoning from *Nyhuis v. Reno*, 204 F.3d 65 (3d Cir. 2000), a *Bivens* action brought by a federal prisoner that was decided just three weeks prior to *Booth*, in which the court expressly rejected the futility exception recognized in *Whitley, Lunsford,* and *Garrett* (the Fifth, Ninth, and Tenth Circuit cases discussed below). The court in *Nyhuis* held that the prisoner was required to exhaust administrative remedies, regardless of the fact that he sought monetary damages that the federal prison grievance system did not allow. As the court explained, the PLRA "completely precludes a futility exception to its mandatory exhaustion requirement," and the futility exception "is not applicable in *any* case." *Nyhuis*, 204 F.3d at 71 (emphasis in original).

The Court of Appeals for the Fifth Circuit

The Fifth Circuit holds that section 1997e(a) does not require a prisoner seeking monetary damages to exhaust prison administrative procedures that cannot provide such relief. In *Whitley v. Hunt*, 158 F.3d 882 (5th Cir. 1998), a federal prisoner sought monetary damages for the prison's alleged deliberate indifference to his medical needs. The prisoner had not exhausted internal prison administrative procedures, which, in any event, could not have provided monetary relief.

The court held that the PLRA did not negate this Court's pre-PLRA holding in *McCarthy v. Madigan*, 503 U.S. 140 (1992), that a federal prisoner in a *Bivens* action is not required to pursue administrative remedies that cannot grant the monetary relief that the prisoner seeks. The court reasoned that the plain language of section 1997e(a) did not answer the question whether Congress intended to require a prisoner seeking only

monetary damages to pursue administrative remedies that did not provide for the recovery of monetary damages. Thus, the court held, "*McCarthy*'s holding that Congress did not intend to require exhaustion of unavailable remedies survived the plain language of the amended statute." *Whitley,* 158 F.3d at 886.

The Court of Appeals for the Sixth Circuit

The Sixth Circuit holds that section 1997e(a) requires a prisoner seeking monetary damages to exhaust all prison administrative remedies, even if those remedies cannot provide the monetary damages that the prisoner seeks. In *Freeman v. Francis*, 196 F.3d 641 (6th Cir. 1999), a state prisoner brought an action under 42 U.S.C. § 1983 against various prison employees seeking only monetary damages, which were not available under the Ohio grievance process. The district court dismissed the complaint for failure to exhaust administrative remedies under section 1997e(a).

The Sixth Circuit affirmed, holding that as long as the prison system has an administrative process that provides review of a prisoner's complaint, the prisoner must exhaust prison remedies even when seeking monetary damages that cannot be obtained. *Freeman*, 196 F.3d at 643. *See also Wolff v. Moore*, 199 F.3d 324, 327 n.3 (6th Cir. 1999); *Hartsfield v. Vidor*, 199 F.3d 305, 308 (6th Cir. 1999); *Lavista v. Beeler*, 195 F.3d 254, 256-57 (6th Cir. 1999); *Wyatt v. Leonard*, 193 F.3d 876, 878 (6th Cir. 1999).

However, the court in *Freeman* left open one possibility for the application of the futility doctrine to the PLRA's administrative exhaustion requirement — if the unavailability of monetary damages was a jurisdictional bar that prevented the prison grievance system ever from hearing the case. As the court

explained, "although it may make sense to excuse exhaustion of the prisoner's complaint where the prison system has a flat rule declining jurisdiction over such cases, it does not make sense to excuse the failure to exhaust when the prison system will hear the case and attempt to correct legitimate complaints, even though it will not pay damages." *Freeman*, 196 F.3d at 643. Thus, the Sixth Circuit's rule provides a variation of the rule that exhaustion is necessary even if the monetary damages sought by the prisoner cannot be obtained, and reflects additional discordance among the circuits.

The Court of Appeals for the Seventh Circuit

The Seventh Circuit holds that section 1997e(a) requires a prisoner seeking monetary damages to exhaust all prison administrative remedies, even if those remedies cannot provide the monetary damages that the prisoner seeks. In *Perez v. Wisconsin Department of Corrections*, 182 F.3d 532 (7th Cir. 1999), a state prisoner sought monetary damages as a result of improper medical treatment. The Seventh Circuit rejected the prisoner's argument that no administrative remedies were "available" because he wanted only monetary damages, which Wisconsin's administrative process could not provide. The court concluded that as long as some remedies were available from the prison administrative process, the prisoner had to exhaust that process. Otherwise, the exhaustion requirement would be limited to cases in which the prisoner could obtain his or her preferred remedy from the administrative process. *Perez*, 182 F.3d at 537; *see also Massey v. Helman*, 196 F.3d 727, 733 (7th Cir. 1999) (reaffirming the holding of *Perez* that there is no futility exception to PLRA's exhaustion requirement).

Like the Sixth Circuit, the Seventh Circuit in *Perez* conjectured a possible exception to its rule — but not the same

exception proposed by the Sixth Circuit. According to the Seventh Circuit, "[i]t is possible to imagine cases in which the harm is done and no further administrative action could supply *any* 'remedy.'... If the injury has healed by the time suit begins, nothing other than damages could be a 'remedy,' and if the administrative process cannot provide compensation, then there is no administrative remedy to exhaust." *Perez,* 182 F.3d at 538 (emphasis in original). This pattern of not only conflicting rules among the circuits, but also variations even among those circuits that appear to agree on the general rule, is an additional reason why this Court should resolve the conflict and propound a uniform, national rule.

The Court of Appeals for the Ninth Circuit

The Ninth Circuit holds that section 1997e(a) does not require a prisoner seeking monetary damages to exhaust prison administrative remedies that cannot provide such relief. In *Lunsford v. Jumao-As*, 155 F.3d 1178 (9th Cir. 1998), a federal prisoner brought a *Bivens* action seeking only monetary damages. The court held that the prisoner "was . . . not required to exhaust his administrative remedies before filing this lawsuit in the district court in light of the fact that the Administrative Remedy Program only provides for injunctive relief." *Lunsford*, 155 F.3d at 1179.

In *Rumbles v. Hill*, 182 F.3d 1064 (9th Cir. 1999), *cert. denied*, ___ U.S. ___, 120 S. Ct. 787 (2000), the court applied its holding in *Lunsford* to a state prisoner in a section 1983 action, holding that, "[e]xhaustion of administrative remedies under section 1997e(a) is not required if a prisoner's section 1983 claim seeks only monetary damages and if the correctional facility's administrative grievance process does not allow for such an award." *Rumbles*, 182 F.3d at 1069.

The Court of Appeals for the Tenth Circuit

The Tenth Circuit holds that section 1997e(a) does not require a prisoner seeking monetary damages to exhaust prison administrative remedies that cannot provide such relief. In *Garrett v. Hawk*, 127 F.3d 1263 (10th Cir. 1997), a federal prisoner seeking monetary damages brought a *Bivens* action against corrections officials, alleging excessive force and deliberate indifference to his medical needs. The district court dismissed the claim under section 1997e(a) for failure to exhaust prison administrative remedies. The Tenth Circuit reversed.

Like the Fifth Circuit in *Whitley*, the Tenth Circuit looked to legislative history and Supreme Court precedent to conclude that the PLRA does not require exhaustion of administrative remedies where the monetary damages that the prisoner seeks cannot be obtained through the administrative process. The court explained that the PLRA did not nullify the basic holding of *McCarthy* that a prisoner need not exhaust futile administrative remedies. *Garrett*, 127 F.3d at 1267 ("[U]ntil an administrative remedy is provided for *Bivens* claims for monetary damages, we must conclude that no exhaustion of administrative remedies is required under PLRA in this case because no such remedies exist to be exhausted."). *See also Basham v. Uphoff*, No. 98-8013, 1998 U.S. App. LEXIS 30999, at *6-9 (10th Cir. Dec. 8, 1998) (state prisoner need exhaust only administrative remedies that are "actually available").

The Court of Appeals for the Eleventh Circuit

The Eleventh Circuit holds that section 1997e(a) requires a prisoner seeking monetary damages to exhaust all prison administrative remedies, even if those remedies cannot provide the monetary damages that the prisoner seeks. In *Alexander v.*

Hawk, 159 F.3d 1321 (11th Cir. 1998), a federal prisoner brought a *Bivens* action against prison officials claiming that enforcement of federal legislation restricting prisoners' access to sexually explicit magazines violated his First Amendment rights. The prisoner argued that he should be excused from failing to exhaust the Federal Bureau of Prisons' administrative remedies because the Bureau had no authority to award the monetary damages he was seeking or to declare the federal legislation unconstitutional. *Alexander*, 159 F.3d at 1325.

The court of appeals held that, "the judicially recognized futility and inadequacy exceptions do not survive the new mandatory exhaustion requirement of the PLRA." *Id.* The court based its conclusion largely on the fact that the pre-PLRA version of the statute required "exhaustion of such plain, speedy and effective remedies as are available," whereas the amended version requires the exhaustion of "such administrative remedies as are available." The court reasoned that the elimination of the phrase "plain, speedy and effective" signified that "Congress no longer wanted courts to examine the effectiveness of administrative remedies but rather to focus solely on whether an administrative remedy is 'available' in the prison involved." *Alexander*, 159 F.3d at 1326. *See also Miller v. Tanner*, 196 F.3d 1190, 1193 (11th Cir. 1999) (court will not review effectiveness of remedies, only whether such remedies were available); *Harris v. Garner*, 190 F.3d 1279, 1285-86 (11th Cir. 1999) (state prisoners required to exhaust all administrative remedies before bringing action under federal law, even if such exhaustion would be futile).[4]

---

[4] The D.C., First, Second, Fourth, and Eighth Circuits have yet to rule on the issue presented. Many district courts in those circuits have shown a tendency to require exhaustion, but routinely have commented on the confusion and conflict

CONCLUSION

An analysis of the case law interpreting section 1997e(a) reveals a significant split among the courts of appeals. Three circuits — the Fifth, Ninth, and Tenth — hold that where a prisoner seeks monetary relief and the administrative remedies cannot provide the monetary relief sought, section 1997e(a) does not require exhaustion. Conversely, four circuits — the Third, Sixth, Seventh, and Eleventh — reach precisely the opposite conclusion, requiring prisoners who seek only monetary relief to exhaust administrative procedures, even where those procedures cannot provide monetary relief. And two of those circuits contemplate possible, but different, exceptions to the general rule.

This issue is deserving of this Court's review because it involves the interpretation of a federal statute at issue in virtually all prisoner civil rights litigation, which seeks to achieve a balance between federal and state relations. As to such an issue,

---

regarding this issue. *See, e.g., Feliciano v. Servicios Correccionales*, 79 F. Supp. 2d 31, 33 (D.P.R. 2000) (acknowledging the sharp split among the circuit courts); *Langford v. Couch*, 50 F. Supp. 2d 544, 546-47 (E.D. Va. 1999) ("Authority from other circuits on this question is split. . . . District courts, too, are divided on this question. These unharmonious results stem from sharply differing views of § 1997e(a), its language and its underlying policy and purpose."); *Sallee v. Joyner*, 40 F. Supp. 2d 766, 769 (E.D. Va. 1999) ("many courts have not agreed on whether the PLRA requires inmates to grieve their claims for monetary damages through the institutional grievance process"); *Smith v. Stubblefield*, 30 F. Supp. 2d 1168, 1172 (E.D. Mo. 1998) ("there is no consensus among the courts that have considered this issue").

the current state of disparate rules throughout the country is intolerable. This Court should grant *certiorari* in order to establish a uniform, national rule on this important issue.

For these reasons, petitioner Timothy Booth respectfully requests that this Court grant his petition for a writ of *certiorari* to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

Nancy Winkelman*
Ralph N. Sianni
Counsel for Petitioner
* *Counsel of Record*

SCHNADER HARRISON SEGAL
& LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2000

Dated: June 5, 2000.

No. _____

In The

Supreme Court of the United States

Timothy Booth,

Petitioner,

v.

C.O. Churner, *et al.*,

Respondents.

On Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Third Circuit

---

APPENDIX TO PETITION FOR A WRIT OF *CERTIORARI*

TIMOTHY BOOTH, Appellant

v.

CHURNER, C.O.; Workensher, Sgt.;
Rikus, Lt.; W. Gardner, Capt.

Nos. 97-7487, 97-7488

United States Court of Appeals,
Third Circuit

Argued: Sept. 27, 1999

Filed: March 7, 2000

Nancy Winkelman (Argued),
Ralph Sianni, Schnader Harrison
Segal & Lewis LLP
Philadelphia, PA, for Appellant.

D. Michael Fisher, Attorney
General, Gwendolyn T. Mosley
(Argued), Senior Deputy Attorney General, John G. Knorr, III,
Chief Deputy Attorney General,
Office of Attorney General, Harrisburg, PA, for Appellees.

Before: BECKER, Chief Judge,
McKEE, and NOONAN,*
Circuit Judges.

*Honorable John T. Noonan, Jr., Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

OPINION OF THE COURT

BECKER, Chief Judge.

This appeal by Timothy Booth from an order of the District Court dismissing his prisoner's civil rights action presents two important questions about the meaning of the mandatory administrative exhaustion requirement in the Prison Litigation Reform Act of 1996 (the PLRA). Booth alleges that while he was confined in the Commonwealth of Pennsylvania's State Correctional Institute at Smithfield, several prison guards, on several occasions, punched him in the face, threw cleaning material in his face, shoved him into a shelf, and tightened and twisted his handcuffs in such a manner as to injure him. Asserting his Eighth Amendment right to be free of cruel and unusual punishment, Booth, acting pro se, brought this 42 U.S.C. § 1983 excessive force action in the District Court for the Middle District of Pennsylvania, requesting various forms of monetary and injunctive relief. He did so without first exhausting the administrative remedies available to him at Smithfield. Because of this failure to exhaust his administrative remedies, the District Court dismissed his action pursuant to 42 U.S.C. § 1997e(a).

As amended by the PLRA, § 1997e(a) provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a) (amended by Pub.L. 104-134, Title I, § 101(a), 110 Stat. 1321-71 (1996). The first question raised by Booth's appeal concerns the applicability of § 1997e(a) to § 1983 excessive force actions; i.e., whether excessive force is a "prison condition" for purposes of the PLRA. This important and difficult question is a matter of first impression for this court. Booth contends that § 1997e(a) "action ... with respect to prison

conditions" language applies only to complaints about the physical conditions in prisons, and does not apply to his § 1983 excessive force action. Therefore, he concludes, the District Court erred in analyzing his action under § 1997e(a). We reject this argument and hold that § 1997e(a) applies to excessive force actions. We base this decision on the plain meaning of the language of the PLRA, case law from our sister circuits, and recent Supreme Court precedent interpreting similar prisoner litigation legislation.

The second question raised by Booth's appeal has to do with the application of § 1997e(a)'s exhaustion requirement. Booth argues that even if § 1997e(a) applies to his action, exhaustion would have been futile, because the available administrative process could not provide him with the monetary relief he seeks. Accordingly, he contends, his failure to exhaust such procedures is not mandated by § 1997e(a), which only requires the exhaustion of administrative remedies "as are available."

Our recent decision in *Nyhuis v. Reno,* 204 F.3d 65, 78 (3d Cir. 2000), rejected this argument. *Nyhuis* was a *Bivens* action brought by a federal inmate, in which we held that "the PLRA amended § 1997e(a) in such a way as to make exhaustion of all administrative remedies mandatory—whether or not they provide the inmate-plaintiff with the relief he says he desires in his federal action." *Id.* at 67. The reasoning of *Nyhuis* applies equally in the § 1983 context, as § 1997e(a) treats *Bivens* actions and § 1983 actions as functional equivalents. *Nyhuis* is therefore controlling in this case.

Accordingly, even though this is an excessive force action, and even though the Commonwealth of Pennsylvania's inmate grievance process could not provide Booth with the money damages he sought, we hold that Booth was required by

§ 1997e(a) to exhaust the administrative remedies available to him prior to filing this action. Because he admittedly has not done so, we will affirm the judgment of the District Court.[1]

I.

On April 21, 1997, Booth began this action in the District Court, using a form provided by the court to prisoners filing pro se complaints under 42 U.S.C. § 1983. He names Corrections Officer Churner, Sergeant Workensher, Lieutenant Rikus, and Captain W. Gardner as defendants. He stated that he had presented the facts of the case in the state prisoner grievance procedure and that his allegations were "dismissed or covered up." He added, "There isn't any help because of retaliation because I spoke up about abuse and corruption." In the space provided for "Parties" he added Superintendent Morgan to the list of defendants. In the space labeled "Statement of Claim" he wrote nothing. In the space labeled "Relief" he asked both for a "preliminary injunction," and for a "protection order for transfer to another prison as my safety and life is at stake."

In a handwritten document filed with his form complaint, Booth alleged the following facts, which gave rise to his § 1983 action. He first complained that, in April 1996, he had been "assaulted by a Sgt. Robinson and a C/O named Thomas. . ." As a result of that assault, he alleges, he has "a shoulder that slips in and out." Subsequent to that incident, he contends, he was denied an operation on his shoulder with "deliberate indifference to [his] shoulder and back." Booth next averred that on February 6, 1997, he threw water on Corrections Officer Thomas, who

---

[1] We express our appreciation to Nancy Winkelman, Esquire, who, acting pro bono at the request of the court, represented Mr. Booth both ably and zealously.

then took him to a storage room and threw a cup of cleaning material in his face.

Booth further claimed that on February 7, 1997, after an exchange of words with Lieutenant Rikus, Rikus shoved him into the shelf in the storage room and Thomas pushed him into a door, while Sergeant White looked on. He alleges that shortly thereafter he was taken back to his cell, where Thomas tightened and twisted his handcuffs in such a way that bruised his wrists. Booth last complained that, on March 23, 1997, Corrections Officer Churner punched him in the face and mouth, while Sergeant Workensher and Corrections Officer Kulian watched. As a result, he contends, his mouth "was busted open" and he received three stitches. Booth ended this narrative, "I need out of this jail before they kill me. And I want each and every officer to be punished for assaulting me. Please, I'm in fear of my life."

In a document dated May 19, 1997, he petitioned "To Show Cause for Appointment of Counsel, To Keep Top Officials as Defendants, Amending Relief Plaintiff Seeks." In this petition, he asked for "an injunction to stop the continuous beating," an order "to get operation," a transfer to another prison, and "money damages $750,000 (permanent damages)." In later paragraphs, he again asked for an injunction, a transfer, and for money damages in different amounts; he also asked for an order to improve the prison law library and to fine prison officials for contempt of court, for an order to hire paralegal assistance for himself, and for "money damages $300,000." In "Plaintiff's Amendment to Specific Relief," filed the next day, he asked for a protective order to be transferred to another jail, appointment of counsel, a pretrial hearing, a disclosure order for prison records, and $400,000 for "nominal, punitive, exemplary, and compensatory" damages.

The District Court, acting *sua sponte* and without requiring an answer from the Defendants, dismissed Booth's action without prejudice on May 30, 1997, as it had the power to do under 42 U.S.C. § 1997e(c). The rationale for the Court's order was that Booth had failed to exhaust his administrative remedies pursuant to 42 U.S.C. § 1997e(a) before filing his § 1983 action. The Court observed that at the time Booth filed his action the Pennsylvania Department of Corrections had a three-step grievance procedure. Booth had taken the first step in the process but made no showing that he had taken the second and third steps, which required that he appeal the decision reached by the prison officials in the first step.[2] The court

---

[2] The Commonwealth of Pennsylvania's Department of Corrections Consolidated Inmate Grievance System consists of a three-part administrative process. Grievances must be submitted, in writing, for initial review to the Facility/Regional Grievance Coordinator, within fifteen days after the events upon which the claims are based. *See* Commonwealth of Pennsylvania, Department of Corrections, Consolidated Income Grievance Review System, Policy No. DC-ADM 804 §§ VI.A.1, VI.B.2. (Oct. 20, 1994). Extensions of this time period may be granted for good cause. *See id.* § VI.B.2.

The procedures for filing such a claim are straightforward. Once submitted, the grievance is investigated and persons having personal knowledge of the subject matter may be interviewed. *See id.* § VI.B.3. If the grievant requests a personal interview, the policy provides that one "shall" be granted. *Id.* Within ten working days of receipt of the grievance by the Grievance Officer, the policy provides that "the grievant shall be provided a written response to the grievance to include a brief rationale, summarizing the conclusions and any actions taken or recommended to resolve the issues raised by the grievance." *Id.* § VI.B.2.

Within five days of the receipt of this initial determination, the grievant may appeal the determination to the appropriate intermediate review personnel. *See id.* §§ VI.C.1, 2. The intermediate review

concluded that as Booth has not exhausted his available remedies, dismissal was required by § 1997e(a). In reaching this conclusion, the District Court assumed, without discussion, that Booth's excessive force action was governed by § 1997e(a).

On June 9, 1997, Booth moved for reconsideration of this order. On July 3, the District Court denied this motion. Booth moved to amend his complaint, and on July 17, 1997, this motion was "dismissed as moot, as plaintiff's case was closed on May 30, 1997." Booth thereafter appealed. The District Court had jurisdiction pursuant to 28 U.S.C. § 1331. We have appellate jurisdiction pursuant to 28 U.S.C. § 1291.[3]

---

personnel have ten working days after the receipt of the appeal to notify the grievant of their decision. *See id.* § VI.C.4. "This decision may consist of approval, disapproval, modification, reversal, remand or reassignment for further fact finding, and must include a brief statement of the reasons for the decision." *Id.* In the third, and final, step of the process, "[a]ny inmate who is dissatisfied with the disposition of an Appeal from an Initial Review decision; may, within seven (7) days of receiving the decision, appeal [to the Central Office Review Committee (the CORC)]. . .for final review." *Id.* § VI.D.1. Absent good cause, final review is not permitted if a grievant has not complied with the procedures governing Initial Review and Appeal from Initial Review. *See id.* § VI.D.2. On final review, the CORC (1) has the power to require additional investigation before it makes its determination, *see id.* § VI.D.5; (2) may consider matters related to the initial grievance, *see id.* § VI.D.7. The CORC must issue its decision within twenty-one days after receipt of an appeal, and it must include a brief statement of the reasons for the decision it reaches. *See id.* As noted above, Booth concedes that he did not avail himself of either the intermediate or final review process.

[3] The District Court dismissed Booth's § 1983 claim *without* prejudice. To be appealable under 28 U.S.C. § 1291, an order of dismissal must ordinarily be with prejudice. *See, e.g., Bhalta v. U.S. Capital Corp.*, 990 F.2d 780 (3d Cir. 1993). In *Garber v. Lego*, 11

II.

We first examine whether the words "action . . . with respect to prison conditions" in § 1997e(a) were intended to apply to excessive force actions such as Booth's. Section 1997e(a) provides that

> *[n]o action shall be brought with respect to prison conditions* under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a) (emphasis added). Booth argues that his § 1983 excessive force action is not governed by § 1997e(a)for three reasons. First, he contends that the words "prison conditions" simply cannot be read to include a prison guard's intentional act of violence. Second, he argues that, when one reads the PLRA and its legislative history as a whole, there is no basis to conclude that § 1997e(a) was meant to reference claims of excessive force. Third, Booth points to two recent Supreme

---

F.3d 1197, 1198 n. 1 (3d Cir. 1993), we recognized an exception to that general rule. We noted that a plaintiff can appeal from a dismissal without prejudice when he declares his intention to stand on his complaint or when he cannot cure the defect in his complaint. *See id.*; *see also, Bethel v. McAllister Bros., Inc.*, 81 F.3d 376, 381 (3d Cir. 1996) (recognizing the same exceptions); (*Trevino-Barton v. Pittsburgh Nat. Bank*, 919 F.2d 874, 878 (3d Cir. 1990) (same). These two conjunctive preconditions are clearly met in this case. In briefing this issue and at oral argument, Booth's counsel stated that Booth had elected "to stand on his complaint without amendment." Additionally, both parties agree that the time is long past for Booth to pursue his normal administrative remedies; therefore, he cannot cure the defect in his complaint on which the District Court based its dismissal.

Court cases, in which the Court has drawn a line between excessive force actions, which involve intentional acts of violence, and conditions-of-confinement actions, which do not. Booth submits that, in enacting the PLRA, Congress evinced no intent to disturb this distinction when it employed the "prison conditions" language it did in § 1997e(a). We take up these arguments in turn.

A.

We would normally begin our analysis of § 1997e(a) by looking to the plain meaning of the words "action . . . with respect prison conditions" that Congress employed in drafting that section. Congress, however, defined the term "civil action with respect to prison conditions" in another section of the PLRA, 18 U.S.C. § 3626(g)(2), and thus spared us from that inquiry, *see Freeman v. Francis*, 196 F.3d 641, 644 (6th Cir. 1999) (holding that "the scope of § 1997e(a)'s exhaustion requirement is determined by the definition of a 'civil action with respect to prison conditions' as set forth in § 3626(g)(2)").

To borrow from the Supreme Court in *Sullivan v. Stroop*, "[t]he substantial relation between the two [provisions in the PLRA] presents a classic case for application of the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." 496 U.S. 478, 484, 110 S. Ct. 2499, 110 L.Ed. 2d 438 (1990) (citations and internal quotations omitted). The PLRA not only amended 42 U.S.C. § 1997e to include various limitations on actions such as the mandatory exhaustion requirement in §1997e(a), it also created 18 U.S.C. § 3626, which in many subsections, prevents federal courts from ordering broad prospective relief in "any civil action with respect to prison conditions." Like § 1997e, § 3626 curbs the extent to which federal prison litigation interferes with the states' and the federal

government's administration of their own prisons. Because these two sections of the PLRA are directed toward similar ends and are thus substantially related, it follows from the canon of interpretation invoked in *Stroop* that the identical terms used in the two sections should be read as conveying the same meaning.

See Freeman, 196 F.3d at 644.

Section 3626(g)(2) provides that the term "civil action with respect to prison conditions" means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison.

18 U.S.C. § 3626(g)(2) (emphasis added).

As a matter of common sense, we understand the "conditions of confinement" language *preceding* the "or" to include complaints such as those regarding cell overcrowding, poor prison construction, inadequate medical facilities, and incomplete law libraries. Put differently, actions arising under this clause relate to the environment in which prisoners live, the physical conditions of that environment, and the nature of the services provided therein. Booth's allegations that prison guards used excessive force against him do not naturally fall into this class of actions.

Booth's action does, however, fit neatly into the language in § 3626(g)(2) *following* the "or," which refers to any civil action with respect to the "effects of actions by government officials on the lives of persons confined in prison." 18 U.S.C. § 3626(g)(2). We read this clause to refer to civil actions ranging from excessive force actions, such as Booth's, to actions "with

respect to" a prison official's decision not to make basic repairs to the prison, or intentionally to deny a prisoner food, heating or medical attention. All of these actions affect the lives of prisoners similarly: They make their lives worse.

B.

This common sense reading of the language in § 3626(g)(2) comports with the manner in which the Supreme Court has read similar language in statutes dealing with prison litigation. In *McCarthy v. Bronson*, 500 U.S. 136, 137, 111 S. Ct. 1737, 114 L.Ed.2d 194 (1991), the Court was faced with a similar provision in a prison litigation statute, 28 U.S.C. § 636(b)(1)(B), which authorized the nonconsensual reference to magistrate judges of "prisoner petitions challenging conditions of confinement." In ruling on the scope of § 636(b)(1)(B), the unanimous Court interpreted the section's "conditions of confinement" language–one half of the definition of "prison conditions" in § 3626(g)(2)–to include all inmate petitions, not only those regarding "continuous conditions," but "isolated episodes of unconstitutional conduct," such as the petitioner's claim of excessive force, as well. *McCarthy*, 500 U.S. at 139, 111 S. Ct. 1737. In reaching this conclusion, the Court wrote:

> We do not quarrel with petitioner's claim that the most natural reading of the phrase "challenging conditions of confinement," when viewed in isolation, would *not* include suits seeking relief from isolated episodes of unconstitutional conduct. However, statutory language must always be read in its proper context. . . .
>
> The text of the statute does not define the term "conditions of confinement" or contain any language suggesting that prisoner petitions

> should be divided into subcategories. On the contrary, when the relevant section is read in its entirety, it suggests that Congress intended to authorize the nonconsensual reference to *all prisoner petitions* to a magistrate.

Id. at 139, 111 S. Ct. 1737 (citations omitted) (emphasis added).

As compared to the statute in *McCarthy*, Congress in the PLRA, made its intent to subject all prisoner actions (save for habeas petitions) to § 1997e(a)'s exhaustion requirements even more clear. It did so by employing the language it did in § 3626(g)(2). In §3626(g)(2), Congress included both the "conditions of confinement" language, which was enough in *McCarthy* to encompass all prison petitions, and the "effects of actions by government officials" language, which, on natural reading, more closely refers to isolated episodes of unconstitutional conduct at the hands of prison officials–such as the instances of unconstitutional excessive force alleged in the case at bar. The addition of the language in § 3626(g)(2) avoids the plain meaning problem with the statute at issue in *McCarthy*, and it clarifies Congress's intent to subject all inmate actions to the PLRA's exhaustion requirement.

The content of the PLRA supports this conclusion. The PLRA was plainly intended, at least in part, to "reduce the intervention of federal courts into the management of the nation's prison systems." *Freeman v. Francis*, 196 F.3d 641, 644 (6th Cir. 1999). Congress would only undermine this objective by carving out certain types of actions from the aegis of the PLRA. Therefore, we believe that the expansive and somewhat overlapping language Congress employed in § 3626(g)(2) must be read—naturally and in its proper context—to encompass all prisoner petitions.

The only court of appeals explicitly to address the question agrees with our conclusion. Relying on *McCarthy* and the definition of "action with respect to prison conditions" in § 3626(g)(2), the Court of Appeals for the Sixth Circuit recently held "that the term 'prison conditions' as used in § 1997e includes claims of excessive force. . . ." *Freeman*, 196 F.3d at 644. The Courts of Appeals for the Fifth and Tenth Circuits have implicitly reached the same conclusion—that excessive force actions are "prison conditions" actions and subject to the exhaustion requirements set forth in § 1997e(a)—without discussing the precise argument raised by Booth and adopted by the dissent. *See Wendell v. Asher*, 162 F.3d 887, 889, 891-92 (5th Cir. 1998) (applying § 1997e(a)'s exhaustion requirement to inmate-plaintiff's excessive force claim); *Garrett v. Hawk*, 127 F.3d 1263, 1264-66 (10th Cir. 1997) (same).[4] In the margin, we

---

[4] The other courts of appeals that have been presented with the issue have declined to resolve it for different reasons. *See Miller v. Tanner*, 196 F.3d 1190, 1191 n. 1 (11th Cir. 1999) (declining to resolve the issue in light of the fact that the court disposed of the appeal on other grounds); *Liner v. Goord*, 196 F.3d 132, 135 (2d Cir. 1999) (recognizing that the law concerning the PLRA's "action... with respect to prison conditions" language was in flux, but refusing to resolve the question "without the benefit of a more complete record"); *Rumbles v. Hill*, 182 F.3d 1064, 1066 n. 2 (9th Cir. 1999) (declining to address the issue because "it was not raised below"). District courts are split on the issue. Those holding that excessive force actions fall under § 1997e(a) include the District Court in the present appeal, *Beason v. Fishkill Correctional Facility*, 28 F. Supp. 2d 884 (S.D.N.Y.1998) (Mukasey J.), and *Johnson v. Garraghty*, 57 F. Supp. 2d 321 (E.D. Va. 1999) (Ellis, J.) These courts rely on *McCarthy* and the definition of "action with respect to prison conditions" in § 3626(g)(2) to support their holding. District courts holding to the contrary include *White v. Fauver*, 19 F. Supp. 2d 305 (D.N.J. 1998) (Orlofsky, J.), and *Carter v. Kiernan*, No. 98 Civ. 2664(JGK), 1999 WL 14014 (S.D.N.Y. Jan 14, 1999) (Koeltl, J.).

respond, in part, to the dissent's adoption of Booth's position.[5]

---

[5] Without addressing *McCarthy*, except to mention our reliance on it, the dissent advances plain meaning and legislative history arguments to support its position. The dissent parses the phrase "prison conditions" in § 1997e(a)-looking to its definition in *Webster's* and in 28 U.S.C. § 3626(g)(2)-and concludes that the phrase does not encompass claims of excessive force. As do we in addressing § 3626(g)(2)'s definition, the dissent divides the section's language into its two components. It opines that the "statutory phrase 'conditions of confinement' [in § 3626(g)(2)] do[es] not encompass specific batteries." Dissent at 301. As noted above, we take no exception to the dissent's understanding of this clause. *See supra* Section II.A. If Congress had only used the "conditions of confinement" language in § 3626(g)(2), we would be forced, as was the Court in *McCarthy*, 500 U.S. at 139-44, 111 S. Ct. 1737, to query whether this language was employed in the context of the statute to connote something other than its most natural meaning. *See supra* Section II.B. (the dissent engages in this "contextual" analysis of the PLRA, but for reasons explained in note 9, *infra*, we are unconvinced by its reading.)

Addressing the second half of the definition provided in § 3626(g)(2), the dissent continues: "A guard hits you on the mouth. Would you report the blow by saying, 'A government official has taken an action having an effect on my life?' No speaker of English would use such a circumlocution." Dissent at 302. Relying on what it concedes are "[s]nippets of legislative history," *id.* the dissent concludes that the statutory phrase "effects of actions by government officials on the lives of persons confined in prisons," 28 U.S.C. § 3626(g)(2), was intended to refer only to actions by prison officials such as "[the delivery of] lukewarm food; ... employ[ing] unlicensed barbers; ... admit[ting] more prisoners than the prison was designed for; ... decid[ing] to provide creamy peanut butter instead of chunky; ... decid[ing] not to offer salad bars or weekend brunches; [or] ... decid[ing] to play classical music on the prison stereo system"-*not* a punch in the jaw or a blow to the body. *Id.* at 301-302 (citing 141 Cong. Rec. S14611-01, S14627 (Sept. 29, 1995)).

C.

Booth attempts to buttress his reading of § 1997e(a) by pointing to Supreme Court precedent that has drawn a distinction between excessive force claims and prison condition claims. When pressed by logic, however, this argument proves as brittle as the analysis it was erected to support.

A familiar maxim of statutory construction provides that "'[w]here Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.'" *United States v. Rosero*, 42 F.3d 166, 171 (3d Cir. 1994) (quoting *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329, 101 S. Ct. 2789, 69 L.Ed.2d 672 (1981)). Invoking this maxim, Booth cites two recent Supreme Court cases in which the Court distinguished between conditions-of-confinement claims and excessive force claims, and treated the two types of claims differently. *See Farmer v. Brennan*, 511 U.S. 825, 832, 114 S. Ct. 1970, 128 L.Ed.2d 811 (1994); *Hudson v. McMillian*, 503 U.S. 1, 9, 112 S.

We find this reading of the second half of § 3626(g)(2) unconvincing. For us as for the court in *Freeman*, 196 F.3d at 644, the phrase naturally references isolated acts taken by prison officials that affect prisoners' rights, including alleged acts of excessive force, *see supra* Section II.A. If one were to accept the dissent's narrower reading of § 3626(g)(2), the two clauses employed in § 3626(g)(2) would be narrower than the lone "conditions of confinement" clause employed by Congress in *McCarthy*, 500 U.S. at 139-44, 111 S. Ct. 1737. *See supra* Section II.B. (discussing *McCarthy*). The claim that the addition of the "effects of acts of government officials" clause renders the scope of § 3626(g)(2) narrower than the provision at issue in *McCarthy* is unconvincing, especially when the additional clause in § 3626(g)(2) clearly broadens the scope of the section.

Ct. 995, 117 L.Ed.2d 156 (1992).[6] From the distinction drawn by the Court in *Farmer* and *Hudson*, Booth reasons that if Congress intended to eliminate that distinction in § 1997e(a) between excessive force and prison condition claims it would have made its intentions explicit.

There are four things wrong with this argument. First, and most obvious, Congress made its intentions clear regarding what "actions with respect to prison conditions" meant in § 1997e(a), by defining that term expressly and expansively in § 3626(g)(2). Congress's explicit language in the PLRA, therefore, obviates the need to resort to the maxim. *See NLRB*, 453 U.S. at 329, 101 S. Ct. 2789.

Second, if we were to ignore the import of § 3626(g)(2)'s definition and apply the maxim based on language in *Farmer* and *Hudson*, we would ignore the difference in the nature of the power allocated to the courts and Congress in our tripartite federal system. As Judge Mukasey noted in his forceful opinion in *Beeson v. Fishkill Correctional Facility*, which held that § 1997e(a) applied to excessive force claims, "a court's responsibility in reading § 1997e is to determine the intent of Congress when it referred to 'prison conditions' in the statute, not the intent of the Supreme Court when it used a similar, but not identical, term in a case decided before the statute was passed."

---

[6] In *Hudson*, 503 U.S. at 9, 112 S. Ct. 995, the Supreme Court distinguished the "extreme deprivations" that are necessary to make out a "conditions-of-confinement claim" from the lesser showing necessary to make out an excessive force claim. In *Farmer*, 511 U.S. at 835-36, 114 S. Ct. 1970, the Court again relied upon this distinction to hold that the mental state necessary to make out an excessive force claim was lesser than the showing required to establish a conditions-of-confinement claim.

28 F. Supp. 2d 884, 890 (S.D.N.Y. 1998) (referring to *Farmer* and *Hudson*).

Third, there is no evidence, other than the Court's use of similar language in *Farmer* and in *Hudson*, that the term "prison conditions" has a well-settled meaning, firmly established in the annals of the common law. In fact, *Farmer* and *Hudson* refer to "conditions of confinement" claims, not "prison conditions" claims.[7] The difference between the terms of art invoked in *Farmer* and *Hudson* and in this case makes resort to maxim even more unreliable.

Fourth, as evidenced by the Supreme Court's opinion in *McCarthy*, the phrase "conditions of confinement," which Booth would have us equate with the phrase "prison conditions," is not so commonly understood. In *McCarthy*—which was decided near the time that *Farmer* and *Hudson* were, but prior to the PLRA's enactment—the Supreme Court had to interpret the phrase "petitions challenging conditions of confinement" in 28 U.S.C. § 636(b)(1)(B). As noted above, the Court read the phrase to include challenges not only to ongoing prison conditions, but also to isolated episodes of allegedly unconstitutional conduct by prison officials, such as assault. *See id.* at 141-43, 111 S. Ct. 1737. Judge Mukasey put it well in *Beeson* when he

---

[7] In *Hudson*, the Court wrote, "[E]xtreme deprivations are required to make out a *conditions-of-confinement* claim.... In the *excessive force* context, society's expectations are different." 503 U.S. at 9, 112 S. Ct. 995 (emphasis added). In *Farmer*, the Court wrote, "In its prohibition of 'cruel and unusual punishments,' the Eighth Amendment places restraints on prison officials, who may not, for example use *excessive physical force* against prisoners. The Amendment also imposes duties on these officials, who must provide humane *conditions of confinement*...." 511 U.S. at 832, 114 S. Ct. 1970 (citation omitted) (emphasis added).

wrote, "the Court [in *McCarthy*] made absolutely no mention of the supposedly familiar distinction between excessive force claims and conditions of confinement claims, despite effectively being presented with the issue squarely." 28 F. Supp. 2d at 891 (citation omitted). The fact that the terms "prison conditions" and "conditions of confinement" seem to have different meanings in different contexts again makes invocation of the maxim of interpretation inappropriate.

With *Farmer* and *Hudson* cast in their proper light, we are confident in holding that § 1997e(a)'s exhaustion requirement does apply to excessive force claims.[8] As we hold that Booth's § 1983 excessive force action is governed by § 1997e(a), we turn our attention to whether § 1997e(a)'s exhaustion requirement bars it. Before doing so, we address (in the margin) another argument advanced by the dissent in support of Booth's reading of the "prison conditions" language in the PLRA.[9]

---

[8] In reading *Farmer* and *Hudson*, we do not believe that we have blurred the distinction drawn by these cases between excessive force actions and conditions-of-confinement actions. Those distinctions of course, still obtain in substantive eighth amendment jurisprudence. However, for the many reasons detailed in the text, that distinction appeared not to be on Congress's mind—nor did it control Congress's hand—when it crafted the procedural bars it did in the PLRA.

[9] The dissent reasons that in enacting the PLRA Congress was concerned only with frivolous prisoner lawsuits, such as those enumerated in note 5, *supra*, rather than "'actual violations of prisoners' rights.'" Dissent at 302 (quoting 141 Cong. Rec. S14408-01, S14418 (Sept. 27, 1995) (Sen. Hatch)). Therefore, it concludes, § 1997e(a) was not intended to encompass excessive force claims. We find three things wrong with this argument.

First, in recounting the large number of lawsuits brought by

prisoners in the few years preceding the passage of the PLRA, several members of Congress cited statistical evidence regarding the number of actions filed by prisoners, and the crushing burden these suits have on federal courts. *See Blas v. Endicott*, 31 F. Supp. 2d 1131, 1133 n. 4 (E.D. Wis. 1999) (collecting examples of this legislative history). The statistical studies they cited did not distinguish between conditions-of-confinement actions and excessive force actions, or even those addressing the brutal violations of prisoners' rights. *See, e.g.*, 141 Cong. Rec. S3703 (daily ed. Apr. 19, 1996) (statement of Sen. Abraham) (noting that "[i]n 1995, 65,000 prisoner lawsuits were filed in federal courts alone" without distinguishing among the many types of suits filed); 141 Cong. Rec. S14626-27 (daily ed. Sept. 27, 1995) (statement of Sen. Hatch) (cataloguing the some 39,000 non-habeas lawsuits filed by inmates in federal courts in 1994, and, as with Sen. Abraham, not distinguishing between conditions-of-confinement actions and excessive force actions). The way this data was presented supports the conclusion that § 1997e(a) applies to *all* prisoner lawsuits, all of which have the *potential* to be frivolous and unduly burden courts, rather than a particular subcategory of claims, as the dissent contends.

Second, examination of the PLRA's legislative history reveals that opponents of the PLRA objected to it on the ground that it would frustrate prisoners in their attempts to pursue meritorious § 1983 excessive force actions. *See* 141 Cong. Rec. S14628 (1995) (statement of Sen. Biden) (discussing two prison assault cases as examples of meritorious suits that would be hindered by passage of the PLRA). These remonstrations—and Congress's failure to heed them—suggests that, in enacting the PLRA, Congress knew what it was doing, and intended that excessive force actions be subject to the exhaustion requirements in § 1997e(a).

Third, sections of the PLRA *other* than § 1997e(a) address the frivolous/non-frivolous lawsuit distinction to which the dissent is so attuned. *See* Dissent at 301-303. For example, 42 U.S.C. § 1997e(c)(1) empowers district courts to dismiss frivolous claims of the chunky peanut butter variety, *sua sponte*. Similarly, 28 U.S.C. § 1915(b)

III.

Turning our attention to the application of § 1997e(a) to Booth's action, Booth concedes that he did not take full advantage of the administrative procedures available to him at Smithfield. After he was allegedly assaulted by the Defendants, he filed several administrative grievances with the Commonwealth

---

discourages inmates from filing frivolous suits by forcing inmate-plaintiffs proceeding *in forma pauperis* to pay court costs and filing fees. Lastly, 28 U.S.C. § 1915(g) closes the door, absent exceptional circumstances, to inmate-plaintiffs who previously have brought three frivolous lawsuits. 42 U.S.C. § 1997e(a), by contrast, makes no mention of the word "frivolous." Nor does it except from its broad swath actions with respect to "actual violations of prisoners' rights.'" Dissent at 302 (citation omitted), as other sections of the PLRA, such as 28 U.S.C. § 1915(g), explicitly do, *see* 28 U.S.C. § 1915(g) (allowing a inmate-plaintiff who has previously brought three frivolous actions to bring a subsequent civil action if he is "under imminent danger of serious physical injury").

> If anything, § 1997e(a)'s mandatory exhaustion requirement enables district courts hearing these prisoner claims to distinguish better between frivolous and meritorious ones. As we noted recently in *Nyhuis v. Reno*, "The administrative process can serve to create a record for subsequent proceedings, it can be used to help focus and clarify poorly pled or confusing claims, and it forces the prison to justify or explain its internal procedures." 204 F.3d at 76 (3d Cir. 2000). The administrative process therefore makes prisoner litigation claims more transparent and easier to review. Operating effectively, the administrative process should also afford district courts more time to address the serious concerns raised by meritorious claims. As *Nyhuis* further noted, § 1997e(a)'s exhaustion requirement was, in part, designed to provide federal courts more time to deal with such actions. *See id.* at 73-78.

of Pennsylvania's Department of Corrections Consolidated Inmate Grievance System (the Inmate Grievance System). When his requests for relief were denied, however, he failed to appeal those decisions as was his right under the Inmate Grievance System. *See supra* note 2 (discussing the two-stage appellate process). Again, § 1997e(a) provides that

> *No action shall be brought* with respect to prison conditions under section 1983 of this title, or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility *until such administrative remedies as are available are exhausted.*

42 U.S.C. § 1997e(a) (emphasis added).

Booth reads this language to mean that he did not need to take advantage of the Inmate Grievance System's administrative procedures because they could not provide him with the monetary relief that he sought in his federal action. For this proposition he cites, among other cases, *Whitley v. Hunt*, 158 F.3d 882 (5th Cir. 1998), *Lunsford v. Jumao-As*, 155 F.3d 1178 (9th Cir. 1998), and *Garrett v. Hawk*, 127 F.3d 1263 (10th Cir. 1997). These cases hold that when a prison's internal grievance procedure cannot provide an inmate-plaintiff with the pure money damages relief he seeks in his federal action, exhaustion of those administrative remedies would be futile.[10]

---

[10] The Defendants argue that Booth requested only injunctive relief in his complaint, and that he did not request remedies "not available" in the state's administrative process. Although Booth's pro se complaint form does not include a specific request for damages, the thirty some pages attached thereto make several references to personal injuries and make three separate claims for monetary relief. *See supra* Part I. Construing Booth's pro se complaint liberally, as we must, *see,*

Our recent opinion in *Nyhuis v. Reno*, 204 F.3d 65, 72 (3d Cir. 2000), rejected the narrow futility exception recognized in *Whitley*, *Lunsford*, and *Garrett*; and the rule announced in *Nyhuis* is dispositive in this case. In *Nyhuis*, we held that "the PLRA amended § 1997e(a) in such a way as to make exhaustion of all administrative remedies mandatory–whether or not they provide the inmate-plaintiff with the relief he says he desires in his federal action." *Id.* at 67. In a lengthy opinion, we detailed the many arguments supporting our position, and ultimately rejected the approach taken by courts recognizing the futility exception. *See, Id.* at 71-78.

Although *Nyhuis* involved a *Bivens* action brought by a federal inmate, the rule we announced in *Nyhuis* has equal force in the § 1983 context, for § 1997e(a), which applies to actions brought by a prisoner "under section 1983 of this title, or any other federal law," treats *Bivens* actions and § 1983 actions as functional equivalents. *See, Nyhuis*, 204 F.3d at 68; *Lavista v. Beeler*, 195 F.3d 254, 256 (6th Cir. 1999); *Alexander v. Hawk*, 159 F.3d 1321, 1324-25 (11th Cir. 1998); *Garrett v. Hawk*, 127

---

e.g., Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996), we conclude that he did request monetary relief in his original complaint, when that complaint is viewed as a whole. Moreover, even if Booth's initial complaint failed to allege money damages, the record shows that he amended his complaint to include a request for damages, as was his right under Fed. R. Civ. Pro. 15(a). In separate pleadings filed seven days and a month after his original complaint, Booth again made reference to his allegations regarding money damages. Fed. R. Civ. Pro. 15(a) provides that "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . ." Judging from the docket entries, the Defendants served no responsive pleadings between the time Booth filed his April 21, 1997 complaint and the time that he filed these later pleadings."

F.3d 1263, 1264-66 (10th Cir. 1997). Indeed, the *Nyhuis* rule has even greater force with respect to § 1983 actions. First, as we explained in *Nyhuis*, additional comity considerations obtain in the § 1983 context—which are not implicated by a *Bivens* action—given the strength of the interest that state prisons and state courts have in resolving complaints filed by state prisoners. *See Nyhuis*, 204 F.3d at 76 n. 11 (citing *Presider v. Rodriguez*, 411 U.S. 475, 491-92, 93 S. Ct. 1827, 36 L.Ed.2d 439 (1973) (discussing these comity concerns)).

Second, additional federalism and efficiency considerations are implicated when reviewing § 1983 actions—as compared to *Bivens* actions—because of the greater difficulty federal courts may have in interpreting and/or predicting the contours of state law and state administrative regulations and practices. *See, Id.* at 75 n. 10 and accompanying text. As we noted in *Nyhuis*, the Supreme Court has "made it clear that 'in the absence of a *plain indication* to the contrary,' Congress should not be understood to 'mak[e] the application of [a] federal act dependent on state law.'" *Id.* at 75 n. 10 (quoting *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 43, 109 S. Ct. 1597, 104 L.Ed.2d 29 (1989)) (emphasis added by *Nyhuis*) (citations and internal quotations omitted). In drafting the PLRA, "Congress gave no indication—let alone a 'plain indication'—that application of § 1997e(a) should depend on the vagaries of state law." *Id.* For these reasons, we therefore hold that the rule we announced in *Nyhuis* applies here.

As in *Nyhuis*, because Booth "failed . . . to exhaust his available administrative remedies (rather than those he believed would be effective)" before filing his § 1983 action, the District Court appropriately dismissed his action without prejudice. *Id.* at 78. Accordingly, the order of the District Court will be affirmed.

NOONAN, Circuit Judge, concurring and dissenting:

The crux of the case is what Congress meant by the statutory term "prison conditions." Of the two words, "conditions" is the key. The noun is plural. It is equivalent to "circumstances." It does not identify a single or momentary matter. *Webster's* provides us with six definitions. Five are not germane. The relevant definition is "existing state of affairs," as in the common phrase "living conditions," "playing conditions," "adverse weather conditions." A slight variant of this definition is "something needing remedy," as in the sentence, "Trains were late to Philadelphia because of conditions on the Main Line." As these instances suggest, "conditions" are circumstances affecting everyone in the area affected by them. "Conditions" affect populations, large or small.

The statute this gives us a noun of established meaning and frequent use. This noun is modified by a second noun, "prison." No ambiguity exists as to its meaning. It identifies the affected population. We have, then, a statutory term "prison conditions" that can only mean "a state of affairs in a prison" or "something needing remedy in a prison." The slight variation does not alter the sense conveyed by "conditions" of more than a momentary event; "conditions" means something that has continued in effect for a period.

A punch on the jaw is not "conditions." A punch in the jaw in prison is not "prison conditions." A punch on the jaw is an act. Churner's alleged busting of Booth's mouth is not a state of affairs. Circumstances in the plural are not at issue. No population is affected. An individual alone is involved. That Churner's alleged blow took place in a prison does not make it "prison conditions." Reading the statute as it is written it is next

to impossible to characterize Booth's complaint of a specific battery as a suit "with respect to prison conditions."

The court rightly notes that we may aid our reading by consulting another section of the statute where Congress has defined "prison conditions" for another purpose. It makes good sense to assume that the definition applies throughout the statute and to use the definition whenever "prison conditions" are mentioned.

In §3626(g)(2) Congress defined "prison conditions" as "conditions of confinement or the effects of actions by government officials in the lives of persons confined to prison." The definition is good evidence that when Congress wanted to extend the meaning of "prison conditions" beyond the ordinary sense of the phrase it knew how to do so. In the definition, Congress did not extend the meaning of "prison conditions" to include acts of battery carried out by officers of a prison. The statutory phrase "conditions of confinement" does not encompass specific batteries. "Conditions of confinement" is no more apt than "prison conditions" to designate an act of battery. The use of "conditions" constrains the sense so that what is meant is a continuing state of affairs. The court concedes that this part of the statutory definition has no application here.

The court invokes *McCarthy v. Bronson*, 500 U.S. 136, 111 S. Ct. 1737, 114 L.Ed.2d 194 (1991), but then does not rely on the statutory language there construed but on the alternative definition afforded by the statute. This definition defines prison conditions as "the effects of actions by government officials in the lives of persons confined in prison." What are actions by government officials that impact the lives of prisoners and appropriately fit within the framework of conditions? Illustrations are afforded by a proponent of the PLRA, Senator Abraham: "how warm the food is, how bright the lights are, whether

there are electrical outlets in each cell, whether the prisoners' hair cut is by licensed barbers," these are "the conditions" regarding which prisoner litigation has occurred and courts have intervened because of the effect of these conditions on prisoners' lives. 142 Cong. Rec. S10576-02, S10576 (Sept. 16, 1996). To take another illustration, "even worse" according to Senator Abraham, is a judge releasing prisoners "to keep the prison population down to what the judge considered an appropriate level." *Id.* In each of these instances an action by a government official—to provide a kitchen or delivery service leading to lukewarm food; or to save on electricity; or to employ unlicensed barbers; or to admit more prisoners than the prison was designed for—has an impact on prisoners' lives and creates conditions that, but for the PLRA, might become the subject of a suit. Other actions having an effect on prisoners' lives and referenced by Senator Reid, are these: a prison official decides to provide creamy peanut butter instead of chunky or provides chunky peanut butter instead of creamy; a prison official decides not to offer salad bars or weekend brunches; a prison official decides to play classical music on the prison stereo system. 141 Cong. Rec. S14611-01, S14627 (Sept. 29, 1995). These actions indubitably had an effect on prisoners' lives by creating conditions that, prior to passage of the PLRA, gave rise to prison litigation. In no way are any of these actions comparable to specific acts of intentional violence. Brutal batteries are far removed from what the sponsors said was on their minds. The senators chose language for the statute mirroring their concerns.

Snippets of legislative history such as these are not necessary to explain the statutory phrase. They are, however, to the point in a way that interpretations of the legislation offered in by its opponents in debate are not. They are, moreover, illuminating as to why Congress had to use fifteen words in a seemingly elephantine way to define the suits Congress wanted to restrain. The multitude of trivial occasions that might affect

prisoners' lives could only be captured by a calculated comprehensiveness that excludes individual acts of rape or beating.

A guard hits you on the mouth. Would you report the blow by saying, "A government official has taken an action having an effect on my life?" No speaker of English would use such a circumlocution. Why should we attribute such circuitousness to Congress? When bones are broken or mouths are mauled, no one on earth, educated or uneducated, would use such roundabout phraseology to express the blow.

The supposition that Congress spoke so ineptly may be sustained by the suspicion that Congress wanted to get rid of all prisoner litigation, therefore Congress must have intended to embrace allegations of specific acts of battery. As a guess at unarticulated policy, such speculation has its attraction. The suspicion is dispelled by leading sponsors of the PRLA such as the chairman of the Senate Judiciary Committee, Senator Hatch. As he put it when offering the bill for the first time in 1995: "Our legislation will also help restore balance to prison conditions litigation and will ensure that Federal court orders are limited to remedying actual violations of prisoners' rights." 141 Cong. Rec. S14408-01, S14418 (Sept. 27, 1995). As he summarized the sponsors' intent: "I do not want to prevent inmates from raising legitimate claims. This legislation will not prevent those claims from being raised." 141 Cong. Rec. S14611-01, S14662 (Sept. 29, 1995). The sponsors of the bill were neither inhumane nor insensitive nor determined to foreclose federal fora to claims of unconstitutional acts of cruelty.

The legislative history serves to refute a suspicion unsupported by the statutory text. As a guide to a fair reading of the English language in the statute before us, the suspicion is mischievous. It leads to a construction of language that cannot be sustained. The canons of construction of our native tongue

should not be contorted to deny a remedy that a conscientious Congress continues to provide.

There are, to be sure, issues raised as to prison conditions in Booth's amended complaint–the state of the prison library, for example, Booth's need for a paralegal, or the failure of prison authorities to prevent alleged beatings. No cause of action against Superintendent Morgan, Captain Gardner or Sergeant Workensher can be discerned that does not fall within the meaning of prison conditions. These complaints Booth should have processed through the prison grievance system. Failing to do so, Booth cannot pursue them now. As to these claims, I concur with the court. But that he put these matters into his complaint does not mean that he forfeits the claims whose treatment was not required to begin administratively. As to Lieutenant Rikus, no specific injury is alleged for which compensation is asked. The complaint here, too, is properly dismissed. The allegations against Churner, Robinson and Thomas survive. As to them I respectfully dissent.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

TIMOTHY BOOTH,	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL NO. 3:CV-97-0611
	:	
C.O. CHURNER, et al.,	:	**[FILED JULY 17, 1997]**
	:	
Defendants	:	

ORDER

NOW, THIS 17th DAY OF JULY, 1997, upon consideration of plaintiff's motion to amend complaint, (Doc. No. 28), IT IS HEREBY ORDERED THAT said motion is dismissed as moot, as plaintiff's case was closed on May 30, 1997.

[signed]
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:97-cv-00611 Booth v. Churner

True and correct copies of the attached were mailed by the clerk to the following:

Timothy Booth
SCI-SM
CN-3556
P.O. Box 999
1120 Pike Street
Huntingdon, PA 16652

cc:	( )
Judge	( )
Magistrate Judge	( )
U.S. Marshal	( )
Probation	( )
U.S. Attorney	( )
Atty. for Deft.	( )
Defendant	( )
Warden	( )
Bureau of Prisons	( )
Ct Reporter	( )
Ctroom Deputy	( )
Orig-Security	( )
Federal Public Defender	( )

Summons Issued	( )	with NIC attached to complt. and served by:
		U.S. Marshal ( )
		Pltfls Attorney ( )
Standard Order 93-5	( )	
Order to Show Cause	( )	with Petition attached & mailed certified mail
		to: US Atty Gen ( )
		PA Atty Gen ( )
		DA of County ( )
		Respondents ( )
Bankruptcy Court	( )	
Other _____	( )	

MARY E. D'ANDREA, Clerk

DATE: 7/18/97 BY: [signed]
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

TIMOTHY BOOTH,	:	
	:	
Plaintiff	:	
	:	
v.	:	CIVIL NO. 3:CV-97-0611
	:	
C.O. CHURNER, et al.,	:	**[FILED JULY 3, 1997]**
	:	
Defendants	:	

ORDER

Background

On April 21, 1997, Timothy Booth, an inmate at the State Correctional Institution at Smithfield in Huntingdon, Pennsylvania, filed the above-captioned pro se civil rights action under 42 U.S.C. § 1983. Along with his complaint, the plaintiff submitted an application requesting leave to proceed in forma pauperis under 28 U.S.C. § 1915. By order of May 30, 1997, the complaint was dismissed, without prejudice, pursuant to 42 U.S.C. § 1997e(a) for plaintiff's failure to exhaust administrative remedies.

On June 9, 1997, Booth filed a document entitled "Motion to Vacate Judgment." In that document Booth requests that the order dismissing his complaint be reconsidered. Although Booth has not filed a brief in support of the motion, the court will construe the motion as a motion for reconsideration

and a brief in support thereof and for the following reasons deny the motion.

Discussion

It is well-settled that a motion for reconsideration is a device of limited utility. It may be used only to seek remediation for manifest errors of law or fact or to present newly discovered evidence which, if discovered previously, might have affected the court's decision. Harasco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); Massachusetts Mutual Life Insurance Co. v. Maitland, Civil No. 87-0827 (M.D. Pa. March 1, 1989) (Rambo, J.).

Booth does not raise or set forth any arguments in his motion for reconsideration that call into question our order of May 30, 1997. That order is not troubled by manifest errors of law or fact and Booth has not presented anything new which, if previously presented, might have affected our decisions. Consequently, the motion for reconsideration will be denied.

NOW, THIS 3rd DAY OF JULY, 1997, IT IS HEREBY ORDERED THAT:

1. Document 18 of the record is construed as a motion for reconsideration and a brief in support thereof.

2. Booth's motion for reconsideration is denied.

[signed]
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:97-cv-00611 Booth v. Churner

True and correct copies of the attached were mailed by the clerk to the following:

Timothy Booth
SCI-SM
CN-3556
P.O. Box 999
1120 Pike Street
Huntingdon, PA 16652

cc:	( )
Judge	( )
Magistrate Judge	( )
U.S. Marshal	( )
Probation	( )
U.S. Attorney	( )
Atty. for Deft.	( )
Defendant	( )
Warden	( )
Bureau of Prisons	( )
Ct Reporter	( )
Ctroom Deputy	( )
Orig-Security	( )
Federal Public Defender	( )

Summons Issued	( )	with N/C attached to complt. and served by:
		U.S. Marshal ( )
		Pltfls Attorney ( )
Standard Order 93-5	( )	
Order to Show Cause	( )	with Petition attached & mailed certified mail
		to: US Atty Gen ( )
		PA Atty Gen ( )
		DA of County ( )
		Respondents ( )
Bankruptcy Court	( )	
Other _____	( )	

MARY E. D'ANDREA, Clerk

DATE: 7/3/97 BY: [signed]
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

TIMOTHY BOOTH, Plaintiff	:	
v.	:	CIVIL NO. 3:CV-97-0611
C.O. CHURNER, et al., Defendants	:	**[FILED MAY 30, 1997]**

ORDER

Background

Timothy Booth, an inmate presently confined in the State Correctional Institution at Smithfield, (the "Prison") in Huntingdon, Pennsylvania, filed the captioned civil rights complaint pursuant to 42 U.S.C. § 1983. Along with his complaint, the plaintiff submitted an application requesting leave to proceed in forma pauperis under 28 U.S.C. § 1915. For the reasons outlined below, the complaint will be dismissed without prejudice, pursuant to 42 U.S.C. § 1997e(a).

With respect to the applicability of administrative remedies, 42 U.S.C. § 1997e(a) reads as follows:

> No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until

> such administrative remedies as are available are exhausted.

This provision makes no distinction between an action for damages, injunctive relief, or both. Thus, prisoners are required to exhaust available administrative remedies prior to initiating a prison conditions case brought pursuant to 42 U.S.C. § 1983 or any other federal law.

As previously stated, the instant case was initiated pursuant to 42 U.S.C. § 1983. Liberally construing the complaint of this pro se litigant, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972), the plaintiff generally alleges that the defendants should be held liable for violating his right to be free from cruel and unusual punishment, which was created by the Eighth Amendment to the United States Constitution. The named defendants are Corrections Officer Churner, Sergeant Workensher, Lieutenant Rikus, Captain Gardner and Superintendent Morgan. The plaintiff, however, refers to only three of the defendants in the body of his complaint.

Specifically, with respect to defendant, Lt. Rikus, the plaintiff states that "words [were] exchanged [between] he and Lt. Rikus and Lt. Rikus said he should back hand slap [plaintiff] and [plaintiff] said go ahead." Plaintiff claims that Lt. Rikus "grabbed [plaintiff's] arm and shoved [him] into the shelf in the storage room." With respect to defendants Churner and Workensher, he asserts that these defendants, along with another corrections officer, came to plaintiff's cell to conduct a strip search. He states that "Churner told [him] to face the wall." Plaintiff maintains that defendant Churner "uncuffed one hand and asked [plaintiff] if [he] spit in Officer White's face." Plaintiff claims that Churner then "punched [plaintiff's] face and mouth." The plaintiff does not allege what injury, if any, he sustained as a result of the defendants alleged actions. For relief,

he seeks a transfer to another prison because "his safety and life is at stake." (Doc. No. 1, complaint).

The Pennsylvania Department of Corrections has a Consolidated Inmate Grievance Review System. DC-ADM 804 (effective October 20, 1994). With certain exceptions not applicable here, DC-ADM 804, Section VI ("Procedures") provides that, after attempted informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator; an appeal from the Coordinator's decision may be made in writing to the Facility Manager or Community Corrections Regional Director; and a final written appeal may be presented to the Central Office Review Committee. If the grievance concerns an alleged medical problem, any appeal must be taken to the Central Office Medical Review Committee.

The instant suit concerns prison conditions. On the question of administrative exhaustion, attached to the complaint is a copy of an initial review response to a grievance filed by plaintiff concerning his claims of abuse, which was dismissed on March 13, 1997. There is no indication that he appealed the dismissal of this grievance. In that connection, the procedure contemplates several tiers of review and the Grievance Review System is not exhausted when an inmate files a grievance and then takes no other action through established channels when a grievance is not resolved to his or her satisfaction. Plaintiff's apparent failure to comply with 42 U.S.C. § 1997e(a), as amended, warrants the dismissal of his complaint but without prejudice. See Pew v. Imschweiler, et al., Civil Action No. 96-0760 (M.D. Pa. September 12, 1996) (Kosik, J.); Johnson v. Gillis, et al., Civil Action No. 96-1569 (M.D. Pa. August 29, 1996) (Conaboy, J.); Lubawski v. Horn, et al., Civil Action No. 96-1371 (M.D. Pa. July 29, 1996) (Rambo, C.J.); Smith v. Giza, Civil Action No. 96-1167 (M.D. Pa. July 2, 1996) (Rambo,

C.J.); Brooks v. Superintendent Lunk of Div. 10, et al., No. 96C3221, 1996 WL 308268 (N.D. Ill. June 5, 1996).

AND NOW, THEREFORE, THIS 30th DAY OF MAY 1997, IT IS HEREBY ORDERED THAT:

1. The complaint is dismissed without prejudice, pursuant to 42 U.S.C. 1997e(a) for failing to exhaust administrative remedies;[1]

2. The motions filed by plaintiff subsequent to the filing of his complaint, (Doc. Nos. 6-8 & 13) are dismissed as moot; and

3. The Clerk of Court is directed to close this case.

[signed]
United States District Judge

---

[1] The dismissal of this action does not relieve Booth of the obligation to pay the full filing fee. Until the filing fee is paid in full, the Administrative Order, issued April 21, 1997, is binding on the warden of SCI-Smithfield and the warden of any correctional facility to which Hall may be transferred.